

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

KEITH BARTELLI, :  
Plaintiff, :  
v. : CIVIL ACTION NO. 3:CV-04-0900  
JOHN GALABINSKI, : (JUDGE KOSIK)  
Defendant. :

**MEMORANDUM AND ORDER**

AND NOW, THIS 27<sup>th</sup> DAY OF SEPTEMBER, 2005, IT APPEARING TO THE COURT THAT:

[1] On April 26, 2004, plaintiff filed the above-captioned action pursuant to 42 U.S.C. § 1983;

[2] the matter was assigned to United States Magistrate Judge Thomas M. Blewitt;

[3] on October 29, 2004 this court adopted in part a Report and Recommendation of the Magistrate Judge and dismissed defendants Bleich, Jones, Lewis, Jastremski, Clark, Long, Bowden, Strachelek, and McGrady, because plaintiff's complaint failed to state viable claims against them. The court permitted the plaintiff to pursue his claims against John Galabinski;

[4] in his complaint, the plaintiff claims that: (1) defendant Galabinski filed a false misconduct report against the plaintiff on September 7, 2001, after the plaintiff had filed a grievance against Galabinski for making, religious, racial, and sexual remarks and threats; (2) the defendant filed a false misconduct against the plaintiff on December 10, 2001; and, (3) the defendant filed a false misconduct

report against the plaintiff on February 22, 2002, in retaliation for a criminal complaint the plaintiff filed against the defendant<sup>1</sup>;

[5] defendant, John Galabinski, filed a motion for summary judgment or for judgment on the pleadings on May 23, 2005;

[6] both parties briefed the motion for summary judgment;

[7] Magistrate Judge Blewitt issued a Report and Recommendation on August 31, 2005, suggesting that we grant the defendant's motion and dismiss all three of the plaintiff's claims;

[8] neither the plaintiff, nor the defendant filed objections to the Report and Recommendation.

IT FURTHER APPEARING THAT:

[9] If no objections are filed to a Magistrate Judge's Report and Recommendation, the Court need not conduct a *de novo* review of the plaintiff's claims. 28 U.S.C. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 150-53, 106 S.Ct. 466 (1985). Nonetheless, the usual practice of the district court is to give "reasoned consideration" to a magistrate judge's report prior to adopting it. *Henderson v. Carlson*, 812 F.2d 874, 878 (3<sup>rd</sup> Cir. 1987);

[10] having examined the Magistrate Judge's Report and Recommendation, we agree with his recommendation to grant the defendant's motion for summary judgment or motion for judgment on the pleadings;

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Plaintiff's complaint contains eight paragraphs. As noted by the Magistrate Judge, however, the complaint contains only three claims of retaliation by the defendant. Those claims are found in paragraphs one, five, and eight of the complaint.

[11] we concur with the Magistrate Judge's analysis of the issues raised in the defendants's motion and find the Magistrate Judge's review of the record to be comprehensive;

[12] specifically, we agree with the Magistrate Judge's conclusion that claims one and two of the plaintiff's complaint are time-barred by the applicable statute of limitations;

[13] we further agree that claim three of the complaint should be dismissed as the plaintiff cannot show that defendant Galabinski was motivated to discipline the plaintiff as a result of his filing a criminal complaint against defendant Galabinski. See *Carter v. McGrady*, 292 F.3d 152, 158 (3d Cir. 2002) (citing *Rauser v. Horn*, 241 F.3d 330, 333 (3d Cir. 2001) (holding a prisoner alleging that prison officials have retaliated against him for exercising a constitutional right must prove that: 1) the conduct in which he was engaged was constitutionally protected; 2) he suffered "adverse action" at the hands of prison officials; and, 3) his constitutionally protected conduct was a substantial or motivating factor in the decision to discipline him)).

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

[1] the Report and Recommendation of Magistrate Judge Thomas M. Blewitt dated August 31, 2005 (Doc. 63) is **adopted**;

[2] the defendant's motion for summary judgment or judgment on the pleadings is granted as to all claims of the plaintiff's complaint;

[3] judgment is entered in favor of defendant, John Galabinski, and against the plaintiff, Keith Bartelli, on all claims; and,

[4] the Clerk of Court is directed to close this case, and forward a copy of this Memorandum and Order to the Magistrate Judge.

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s/Edwin M. Kosik  
United States District Judge